

section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in an iShares Fund in excess of the limits in section 12(d)(1)(A), each Investing Fund and the iShares Fund will execute an agreement stating, without limitation, that their respective board of directors or trustees and their respective investment advisers, or their respective sponsors or trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end iShares Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-end iShares Fund of the investment. At such time, the Investing Fund will also transmit to the Open-end iShares Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-end iShares Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The iShares Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-end iShares Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under any advisory contracts of any Open-end iShares Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No iShares Fund in which an Investing Fund will invest pursuant to the Order will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained

in section 12(d)(1)(A) of the Act, other than the India Subsidiary or any similar wholly-owned subsidiary, and except to the extent permitted by rule 12d1-1 under the Act or an exemptive order that allows the iShares Fund to purchase shares of a money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61507; File No. SR-DTC-2010-03]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the Option To Receive a Physical Certificate From DTC for Un-sponsored American Depository Receipts That Are Part of the Fast Automated Securities Transfer Program

February 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on January 19, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to eliminate the option to receive a physical certificate from DTC for un-sponsored American Depository Receipts ("ADRs") that are a part of DTC's Fast Automated Securities Transfer Program ("FAST").

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

An ADR is a security that trades in the United States but represents a specified number of shares in a foreign corporation. ADRs are issued in the U.S. by depository banks. An ADR issuance is "un-sponsored" when there is no formal agreement between the depository bank(s) issuing the shares and the foreign company whose underlying shares are the basis for the ADR. Because there is no agreement between the issuer and a specific depository, more than one depository can be involved in the issuance and cancellation of the ADR in an un-sponsored program. Un-sponsored ADRs trade in the over-the-counter market.

Currently, in order to deposit an un-sponsored ADR at DTC, a depository bank that is also a DTC participant will have its transfer agent create a certificate for the new issue ADR, which is then deposited at DTC by the depository bank. In an effort to eliminate some of the risks and costs related to the processing of securities certificates,<sup>4</sup> DTC recently made un-sponsored ADRs eligible for DTC's Fast Automated Securities Transfer Program ("FAST").<sup>5</sup> DTC's withdrawal-by-transfer ("WT") service allows participants to instruct DTC to have securities assets which are held in the participant's DTC account reregistered in the name of the

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> The costs and risks associated with physical certificates include, among other things, those associated with safekeeping, transfer, shipping, messengers, and insurance costs.

<sup>5</sup> FAST was designed to eliminate some of the risks and costs related to the creation, movement, processing, and storage of securities certificates. Under the FAST Program, FAST transfer agents hold FAST eligible securities in the name of Cede & Co. in custody and for the benefit of DTC. As additional securities are deposited or withdrawn from DTC, the FAST transfer agents adjust the size of DTC's position as appropriate and electronically confirm these changes with DTC. For more information relating to FAST, see Securities Exchange Act Release Nos. 13342 (March 8, 1977) [File No. SR-DTC-76-3]; 14997 (July 26, 1978) [File No. SR-DTC-78-11]; 21401 (October 16, 1984) [File No. SR-DTC-84-8]; 31941 (March 3, 1993) [SR-DTC-92-15]; and 46956 (December 6, 2002) [File No. SR-DTC-2002-15].

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

participant, an investor, or a third party. Upon receipt of a WT instruction from a participant, DTC either sends a certificate to the transfer agent for reregistration in the name of the person or entity identified in the WT instruction or instructs the transfer agent to debit DTC's FAST position and to issue securities in the name of the person or entity identified in the WT instruction.

As part of DTC's response to an industry effort to reduce the number of securities certificates in the U.S. market (sometimes referred to as "dematerialization"),<sup>6</sup> DTC initiated a program of steadily increasing its fees for WTs and other withdrawals to create strong disincentives for the use of physical certificates. Consistent with that program, DTC is now proposing to eliminate a participant's ability to use the WT service to have physical certificates issued for unsponsored ADRs that are a part of the FAST Program. DTC believes that this modification of its WT service reaffirms its goals of reducing the number of securities certificates in the U.S. markets. DTC participants will continue to have the ability to request a physical certificate directly from the transfer agent by using the DWAC process.<sup>7</sup>

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("Act"), and the rules and regulations thereunder because it modifies a DTC service in order to reduce the use of physical certificates and the inherent risks associated with the use of physical certificates and as such facilitates the prompt and accurate clearance and settlement of securities.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify

<sup>6</sup> For more information on dematerialization, see Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004) ([File No. S7-13-04]).

<sup>7</sup> DWAC is a method of electronically transferring shares between a DTC Participant and the transfer agent for the shares. For more information about the DWAC service, see Securities Exchange Act Release No. 30283 (January 23, 1992), 56 FR 59307 (November 18, 1991) (SR-DTC-91-16) (order granting approval of the DWAC service).

the Commission of any written comments received by DTC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2010-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2010-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

Reference Section, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/dtc/2010-03.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-03.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2010-03 and should be submitted on or before March 15, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61515; File No. SR-NASDAQ-2010-014]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center and To Correct a Typographical Error in Rule 7018

February 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).